

September 14, 2012

Via Online Submission

David Stawick
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants – BCBS / IOSCO Consultative Paper; RIN 3038-AC97

Dear Mr. Stawick:

On July 12, 2102, the Commodity Futures Trading Commission (“CFTC” or the “Commission”) issued a request for comment in regard to the consultative paper recently published by the Basel Commission on Banking Supervision (“BCBS”) and the International Organization of Securities Commissions (“IOSCO”) addressing possible margin requirements for non-centrally cleared derivatives (“BCBS/IOSCO Margin Release”).¹ The purpose of the Commission’s request is to supplement the record of its proposed rulemaking concerning margin requirements for uncleared swaps entered into by Swap Dealers and Major Swap Participants (the “Margin NOPR”).²

The Coalition of Physical Energy Companies (“COPE”)³ filed comments in response to the Margin NOPR on July 11, 2011.⁴ In those comments, COPE stated as follows:

As stated in the Margin NOPR, the Commission has determined that “[c]onsistent with Congressional intent, the [Margin NOPR] proposal

¹ *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants*, 77 Fed. Reg. 41109 (July 12, 2012)

² *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants*, 76 Fed. Reg. 23732 (April 28, 2011).

³ The members of the Coalition of Physical Energy Companies’ are physical energy companies in the business of producing, processing, and merchandizing energy commodities at retail and wholesale. The members are: Apache Corporation; EP Energy LLC; Enterprise Products Partners, L.P.; Iberdrola Renewables, Inc.; Kinder Morgan; MarkWest Energy Partners, L.P.; Noble Energy, Inc.; NRG Energy, Inc.; Shell Energy North America (US), L.P.; SouthStar Energy Services LLC; and Targa Resources.

⁴ Comments of the Coalition of Physical Energy Companies, Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, RIN No. 3038-AC97 (Filed July 11, 2011) (“COPE Margin Comments”).

would not impose margin requirements" on trading relationships between swap dealers and major swap participants and non-financial end-users such as COPE members. COPE believes that the Commission has properly interpreted Congressional intent and that no regulatory margin requirements should be imposed on such trading relationships.

However, the Commission has proposed two requirements affecting non-financial end-users in the Margin NOPR. These are requirements that: (1) swap trading documentation include "credit support arrangements in place consistent with proposed Section 23.504," as well as five other specific credit support agreement components; and (2) assets may be pledged as "margin" only if their value is "reasonably ascertainable on a periodic basis in a manner agreed by the parties in the credit support arrangements."

COPE believes that these requirements are unnecessary in light of the Commission's determination, and Congressional intent, that no regulatory margin requirements should be imposed on non-financial end-users. As COPE understands it, the intent of the Margin NOPR is that swap dealers/major swap participants and non-financial end-users will negotiate appropriate trading arrangements which may include a margin component if the parties agree. Given the foregoing, the proposed margin-related requirements should be eliminated or clarified to ensure that they are consistent with the Commission's determination regarding margin requirements and Congressional intent.⁵

COPE believes that the BCBS/IOSCO Margin Release provides no basis to alter the Commission's proposals in the Margin NOPR, with the exception of the modifications sought by the COPE Margin Comments. The BCBS/IOSCO Margin Release is not directed towards physical energy companies such as COPE members. Rather, it is directed towards "financial firms and systemically-important non-financial entities."⁶ In fact, the BCBS/IOSCO Margin Release states:

There was broad consensus within the BCBS and IOSCO that the margin requirements need not apply to non-centrally-cleared derivatives to which non-financial entities that are not systemically-important are a party, given that (i) such transactions are viewed as posing little or no systemic risk and (ii) such transactions are exempt from central clearing mandates under most national regimes.⁷

The transactions that Congress envisioned as qualifying for the End-User Exception⁸ clearly fall within the boundaries of those excluded from the elements of the BCBS/IOSCO Margin Release. As contemplated in the Margin NOPR, Swap Dealers and Major Swap Participants have the requisite analytical capabilities to require appropriate credit support from their counterparties. No aspect of the

⁵ COPE Margin Comments at 2.

⁶ See BCBS/IOSCO Margin Release at 2.

⁷ *Id.* at 9.

⁸ See 17 C.F.R. § 39.6 (2012).

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BCBS/IOSCO Margin Release which, by its terms, effectively does not apply to non-financial entities such as those eligible for the End-User Exception should be adopted by the Commission concerning such entities.

Very truly yours,

/s/ David M. Perlman

David M. Perlman
Counsel to
Coalition of Physical Energy Companies